

House Bill 1136

By: Representatives Ralston of the 7<sup>th</sup>, Willard of the 49<sup>th</sup>, Lunsford of the 110<sup>th</sup>, Cooper of the 41<sup>st</sup>, Mumford of the 95<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

To amend Part 2 of Article 6 of Chapter 7 of Title 17 of the Official Code of Georgia Annotated, relating to insanity and mental incompetency, so as to change, reorganize, and clarify certain provisions relating to proceedings in cases involving a plea of mental incompetency to stand trial; to define terms; under certain circumstances, to provide for the prosecuting attorney to petition the probate court for the defendant's involuntary civil commitment or habilitative services; to provide that defendants who are charged with a nonviolent offense and found mentally incompetent to stand trial shall have the charges dismissed by operation of law under certain circumstances; to remove the requirement that a defendant charged with a misdemeanor offense be committed to the Department of Human Resources for a period of one year prior to charges being dismissed by operation of law; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Part 2 of Article 6 of Chapter 7 of Title 17 of the Official Code of Georgia Annotated, relating to insanity and mental incompetency, is amended by revising in its entirety Code Section 17-7-130, relating to proceedings upon plea of mental incompetency to stand trial, as follows:

"17-7-130.

(a) As used in this Code section, the term:

(1) 'Committing court' means the court which has jurisdiction over the criminal charges against the defendant.

(2) 'Department' means the Department of Human Resources.

(3) 'Inpatient' shall have the same meaning as in paragraph (9.1) of Code Section 37-3-1.

(4) 'Nonviolent offense' means any offense other than:

- (A)(i) Murder;
- (ii) Rape;
- (iii) Aggravated sodomy;
- (iv) Armed robbery;
- (v) Aggravated assault;
- (vi) Hijacking of a motor vehicle or an aircraft;
- (vii) Aggravated battery;
- (viii) Aggravated sexual battery;
- (ix) Aggravated child molestation;
- (x) Aggravated stalking;
- (xi) Arson in the first degree and in the second degree;
- (xii) Stalking;
- (xiii) Fleeing and attempting to elude a police officer;
- (xiv) Any sexual offense against a minor; or
- (xv) Any offense which involves the use of a deadly weapon or destructive device;
- and

(B) Those felony offenses deemed by the committing court to involve an allegation of actual or potential physical harm to another person.

(5) 'Outpatient' shall have the same meaning as in paragraph (12.1) of Code Section 37-3-1, provided that the committing court determines that the defendant meets the criteria for release on bail or other pretrial release pursuant to Code Section 17-6-1.

(b) Whenever a plea is filed that a defendant in a criminal case is mentally incompetent to stand trial, it shall be the duty of the committing court to cause the issue of the defendant's mental competency to stand trial to be tried first by a special jury.

(c) If the special jury finds the defendant mentally incompetent to stand trial, the committing court shall retain jurisdiction over the defendant and shall transfer the defendant to the department; provided, however, that if the defendant is charged with a misdemeanor offense not included in subparagraph (a)(4)(A) of this Code section or a nonviolent offense, the committing court may, in its discretion, retain jurisdiction over the defendant and may allow the department to perform an evaluation on an outpatient basis. If the committing court allows an outpatient evaluation and the defendant is in custody, such court may release the defendant in accordance with the provisions of Code Section 17-6-1, et seq. Within 90 days after the department has received actual custody of a defendant or, in the case of an outpatient, a court order requiring an evaluation of a defendant, the department shall report its opinion to the committing court after evaluating and diagnosing the defendant to determine:

1 (1) Whether the defendant is presently mentally competent to stand trial;

2 (2) If the defendant is not presently mentally competent to stand trial, whether there is  
3 a substantial probability that the defendant will attain mental competency to stand trial  
4 in the foreseeable future; and

5 (3) If the defendant is not presently mentally competent to stand trial and there is no  
6 substantial probability that the defendant will attain mental competency in the foreseeable  
7 future, whether the defendant currently meets criteria for commitment as an inpatient or  
8 as an outpatient pursuant to Chapter 3 or 4 of Title 37, as applicable.

9 (d) At any time during proceedings held pursuant to this Code section, the committing  
10 court may order an independent evaluation of the defendant by a court appointed licensed  
11 clinical psychologist or psychiatrist who shall report to such court in writing on any matter  
12 the court determines, including the issues set forth in paragraphs (1) through (3) of  
13 subsection (c) of this Code section.

14 (e) If at any time during the defendant's evaluation by the department it determines that  
15 the defendant is mentally competent to stand trial, the department shall immediately report  
16 such finding and the reasons therefor to the committing court. If the defendant is an  
17 inpatient, the department shall return the defendant to the committing court as provided for  
18 in subsection (i) of this Code section. If the defendant is an outpatient, the defendant may  
19 remain in the community under conditions of bond or other conditions set by the  
20 committing court, if any, until the date of hearing or trial.

21 (f) If within the initial evaluation period provided in subsection (c) of this Code section the  
22 department determines that an inpatient defendant is mentally incompetent to stand trial  
23 and:

24 (1) There is not a substantial probability that the defendant will attain competency in the  
25 foreseeable future, the department shall return the physical custody of the defendant to  
26 the committing court as provided in subsection (i) of this Code section and follow the  
27 procedures set forth in paragraph (2) of subsection (h) of this Code section; or

28 (2) There is a substantial probability that the defendant will attain competency in the  
29 foreseeable future, the department shall retain custody over the defendant for the purpose  
30 of continued treatment for an additional period not to exceed nine months; provided,  
31 however, that if the defendant is charged with a misdemeanor offense not included in  
32 subparagraph (a)(4)(A) of this Code section or a nonviolent offense, the committing court  
33 shall retain jurisdiction over the defendant but may, at any time, allow the department to  
34 provide treatment on an outpatient basis. The department shall monitor the defendant's  
35 outpatient treatment for an additional period not to exceed nine months.

(g) If within the initial evaluation period provided in subsection (c) of this Code section the department determines that an outpatient defendant is mentally incompetent to stand trial and:

(1) There is not a substantial probability that the defendant will attain competency in the foreseeable future, the committing court shall follow the procedures set forth in paragraph (2) of subsection (h) of this Code section; or

(2) There is a substantial probability that the defendant will attain competency in the foreseeable future, the committing court shall retain jurisdiction over the defendant but may allow the department to provide treatment on an outpatient basis. The department shall monitor the defendant's outpatient treatment for an additional period not to exceed nine months.

(h) At the end of the nine-month period set forth in paragraph (2) of either subsection (f) or (g) of this Code section, as applicable, or at any time prior if the defendant's condition warrants, the committing court shall have a hearing. If the defendant is an inpatient, the department shall return the defendant to the committing court as provided for in subsection (i) of this Code section. If the defendant is found to be:

(1) Competent to stand trial, the defendant may be prosecuted for the charges; and if the defendant is an inpatient, the department shall return the defendant to the committing court as provided for in subsection (i) of this Code section; or

(2) Mentally incompetent to stand trial, the committing court shall proceed as follows:

(A) If the defendant is charged with a misdemeanor offense or a nonviolent offense, the charge against the defendant shall be dismissed by operation of law. If the defendant appears to require further treatment, the committing court shall order the prosecuting attorney to file a petition in the probate court for involuntary civil commitment or habilitation services; and the committing court shall retain jurisdiction of the defendant until the time of the hearing in the probate court; or

(B) If the defendant is charged with an offense listed in subparagraph (a)(4)(A) of this Code section, or an offense as identified in subparagraph (a)(4)(B) of this Code section, the committing court shall retain jurisdiction of the defendant and conduct a hearing at which it shall hear evidence and consider all psychiatric and psychological reports submitted to such court and determine whether the prosecuting attorney has proved by clear and convincing evidence that the defendant meets the criteria for involuntary civil commitment as an inpatient or as an outpatient pursuant to Chapter 3 or 4 of Title 37, as applicable. The burden of proof in such hearings shall be upon the state.

(i) If such defendant does not meet the criteria for inpatient or outpatient civil commitment, such defendant shall be released in accordance with the provisions of Code Section 17-6-1, et seq.

(ii) If such defendant is found to meet the criteria for involuntary civil commitment as an inpatient or outpatient, the committing court may issue an order committing the defendant. A defendant who is involuntarily civilly committed may be released from such inpatient or outpatient commitment only by order of the committing court in accordance with the procedures specified in paragraphs (1) through (3) of subsection (f) of Code Section 17-7-131, except that the burden of proof in such release hearing shall be on the state. If the committed defendant cannot afford a physician or licensed clinical psychologist of the defendant's choice, the defendant may petition the committing court and the court may order such cost to be paid by the county. The department shall report annually to the committing court on whether the civilly committed defendant continues to meet criteria for involuntary commitment as an inpatient or an outpatient pursuant to Chapter 3 or 4 of Title 37, as applicable. The committing court shall review the case and enter an appropriate order which shall:

(I) Renew the inpatient or outpatient civil commitment;

(II) Change the commitment either from inpatient to outpatient or from outpatient to inpatient;

(III) Dismiss the charges and transfer the jurisdiction of the case to the probate court for further proceedings pursuant to Title 37, if appropriate; or

(IV) Dismiss the charges and release the defendant.

(i) When an inpatient defendant is to be returned to the custody of law enforcement, such defendant shall be discharged into the custody of a law enforcement officer of the jurisdiction of the committing court unless the charges which led to the commitment have been dismissed, in which case the defendant shall be discharged. In the event a law enforcement officer does not appear and take custody of the defendant within 20 days after notice to the appropriate law enforcement official in the jurisdiction of the committing court, the presiding judge of the committing court, and the prosecuting attorney for the court, the department shall return the defendant to one of the committing court's detention facilities. The cost of returning such defendant shall be paid by the county in which the committing court is located. All notifications shall be sent by certified mail or statutory overnight delivery, return receipt requested, to the law enforcement official and presiding judge of the jurisdiction of the committing court. With the concurrence of the committing court and upon the recommendation of the department, a defendant may be held by the department instead of at the court's detention facilities whenever, in the department's opinion, such detention in the committing court's detention facilities would be detrimental to the well-being of the defendant. Such alternative detention shall continue only until the date of the defendant's trial or hearing.

(j) Any defendant found by the department to be mentally competent to stand trial and returned to the committing court as provided in subsection (i) of this Code section shall again be entitled to file a special plea as provided for in this Code section.

(k) If a defendant is found to be mentally incompetent to stand trial, whether or not committed pursuant to this Code section, the state may file at any time a motion for rehearing on the issue of the defendant's mental competency. The committing court shall grant said motion upon a showing by the state that there are reasonable grounds to believe that the defendant's mental condition has changed. If this motion is granted, the case shall proceed as provided in subsection (b) of this Code section."

## **SECTION 2.**

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to cases pending on the effective date of this Act.

## **SECTION 3.**

All laws and parts of laws in conflict with this Act are repealed.